

405 KAR 30:170. Citizen demands for enforcement.

RELATES TO: KRS 224.091, 350.250, 350.600

STATUTORY AUTHORITY: KRS 224.033, 224.091, 350.028, 350.050, 350.250, 350.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.600 requires the Environmental and Public Protection Cabinet to develop administrative regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation pertains to demands by citizens upon the cabinet to enforce the statutes and administrative regulations pertaining to oil shale operations which it is the cabinet's duty to enforce. This administrative regulation also delineates the procedural requirements of such demands.

Section 1. Citizen Demands for Enforcement. Any citizen of this Commonwealth having knowledge that any of the statutes and administrative regulations pertaining to oil shale operations which it is the cabinet's duty to enforce may bring such failure to enforce to the attention of the department according to the provisions of this administrative regulation.

Section 2. Procedure. (1) All demands to enforce the law must be in writing, under oath, with facts set forth specifically stating the nature of the failure to enforce the law with sufficient information to identify the statutory provision, administrative regulation, order, or permit condition allegedly violated and the act or omission alleged to constitute a violation.

(2) The demand shall state the name, address and telephone number of the person making the demand.

(3) The demand shall state the name, address and telephone number of legal counsel, if any, of the person making the demand.

(4) The knowing statement of false facts and charges in such affidavit shall constitute perjury and shall subject the affiant to penalties under the law of perjury.

(5) The cabinet shall investigate the allegations made in the demand and respond, in writing, to the person making such demand. The response shall specifically state the results of the investigation and the action, if any, the cabinet has taken or intends to take.

Section 3. Citizen Suits. If the cabinet neglects or refuses for any unreasonable time but in no event longer than sixty (60) days after demand to enforce such provisions, any such citizen shall have the right to bring an action of mandamus in the circuit court of the county in which the operation which relates to the alleged lack of enforcement is being conducted. However, such action may be brought immediately after a demand for enforcement when the violation or order complained of constitutes an imminent threat to the health or safety of the complaining citizen or would immediately affect a legal interest of the complaining citizen. (8 Ky.R. 108; 477; eff. 3-1-1982; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)